

REMARKS

Formal Matters

Claims 1-2, 5-10, 12-13, 15-16, 84-108 and 113-120 are pending after entry of the amendments set forth herein.

Claims 1-2, 5-10, 12-13, 15-16 and 84-108 were examined. Claims 1-2, 5-10, 12-13, 15-16 and 84-108 were rejected.

Claims 6-10 and 12 were objected to as being dependent upon a rejected base claim, but were indicated to contain allowable subject matter.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

Claims Rejected On Ground of Obviousness-Type Non-Statutory Double Patenting (U.S. Patent No. 6,685,632 in view of Dobrovolny)

In the Official Action of March 4, 2009, claims 1-2, 5-10, 12-13, 15-16 and 101-108 were rejected on the ground of nonstatutory obviousness-type double patenting over claims 1-2, 5-10, 12-13 and 15-16 of U.S. Patent No. 6,685,632 in view of Dobrovolny, U.S. Patent No. 5,899,627.

Although Applicants do not agree with this ground of rejection and do not acquiesce thereto, in order to advance the prosecution of the instant application, Applicants are submitting herewith a terminal disclaimer regarding U.S. Patent No. 6, 685, 632.

According, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1-2, 5-10, 12-13, 15-16 and 101-108 on the ground of nonstatutory obviousness-type double patenting over claims 1-2, 5-10, 12-13 and 15-16 of U.S. Patent No. 6,685,632 in view of Dobrovolny, U.S. Patent No. 5,899,627, as being moot.

Claims Rejected On Ground of Nonstatutory Obviousness-Type Double Patenting (U.S. Patent No. 6,685,632 in view of Hancock)

Claims 84-100 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 5 of U.S. Patent No. 6,685,632 in view of Hancock, U.S. Patent No. 6,331,157.

Although Applicants do not agree with this ground of rejection and do not acquiesce thereto, in order to advance the prosecution of the instant application, Applicants are submitting herewith a terminal disclaimer regarding U.S. Patent No. 6, 685, 632.

Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 84-100 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 5 of U.S. Patent No. 6,685,632 in view of Hancock, U.S. Patent No. 6,331,157, as being moot.

Claims Rejected Under 35 U.S.C. Section 102(e) (Dobrovoly)

Claims 1-2, 5, 7 13 and 15-16 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Dobrovoly, U.S. Patent No. 5,899,627.

Claim 1 has been amended above to recite that said base portion further includes a clamping mechanism configured to clamp said base to a relatively fixed object. Support for this amendment can be found for example, at page 32, lines 12-21 of the specification, Figs. 33-36 and the descriptions thereof, and throughout the specification and drawings. It is respectfully submitted that Dobrovoly et al. clearly fails to disclose a clamping mechanism as claimed, in addition to the other features recited in claim 1.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1-2, 5, 7 13 and 15-16 under 35 U.S.C. Section 102(e) as being anticipated by Dobrovoly, U.S. Patent No. 5,899,627, as being inappropriate.

Claims Rejected Under 35 U.S.C. Section 102(e) (Cartier et al.)

Claims 84-89, 92-94 and 97-106 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Cartier et al., U.S. Patent No. 6,102,854. The Examiner asserted that Cartier et al. shows

an instrument mount apparatus (Figs. 3 and 5B) comprising a grip member 50 capable of being locked to and released from a stable support/rail 40 via flange 521; a first joint member 53 and a second joint member (ball 54/56).

Applicants have amended claim 84 above to recite that said instrument mount assembly has a clamping mechanism mountable to a portion of at least one of said first and second retractor blades. It is respectfully submitted that the flange 521 of Cartier et al. is clearly not a clamping mechanism.

Claim 101 has been amended above to recite that said at least one second joint member is external of and spaced from said first joint member. It is respectfully submitted that the ball 54/56 is clearly not external of member 53, nor is it spaced from member 53.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 84-89, 92-94 and 97-106 under 35 U.S.C. Section 102(e) as being anticipated by Cartier et al., U.S. Patent No. 6,102,854, as being inappropriate.

Claims Rejected Under 35 U.S.C. Section 103(a) (Cartier et al. in view of Benetti et al.)

Claims 107-108 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Cartier et al., U.S. Patent No. 6,102,854 in view of Benetti et al., U.S. Patent Application Publication No. 2001/0044572. The Examiner admitted that the stabilizer of Cartier et al. does not comprise a plurality of interconnecting links articulating with the joint member and the stabilizer, but asserted that it would have been obvious to replace the rod of Cartier et al. with the flexible system of Benetti et al. to enable the surgeon to place the stabilizer in many more orientations.

Applicants respectfully traverse. Claims 107-108 depend from claim 101, and, it is respectfully submitted, are therefore allowable for at least the same reasons provided above with regard to claim 101, since Benetti et al. does nothing to make up for the deficiencies of Cartier et al. in meeting the recitations of claim 101.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 107-108 under 35 U.S.C. Section 103(a) as being unpatentable over Cartier et al., U.S. Patent No. 6,102,854 in view of Benetti et al., U.S. Patent Application Publication No. 2001/0044572, as being inappropriate.

Claims Rejected Under 35 U.S.C. Section 103(a) (Cartier et al. in view of Hancock)

Claims 95-96 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Cartier et al., U.S. Patent No. 6,102,854 in view of Hancock, U.S. Patent No. 6,331,157. The Examiner admitted that Cartier et al. lacks a disclosure of open slots on a retractor blade for receiving and securing sutures, but asserted that it would have been obvious to modify Cartier et al. to include suturing slots in order to receive and secure sutures therein.

Applicants respectfully traverse. Claims 95-96 depend from claim 84, and, it is respectfully submitted, are therefore allowable for at least the same reasons provided above with regard to claim 84, since Hancock does nothing to make up for the deficiencies of Cartier et al. in meeting the recitations of claim 84.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 95-96 under 35 U.S.C. Section 103(a) as being unpatentable over Cartier et al., U.S. Patent No. 6,102,854 in view of Hancock, U.S. Patent No. 6,331,157, as being inappropriate.

New Claims

New claims 113-120 have been submitted above. Claims 113-114 depend from claim 1. Support for claims 113-114 can be found, for example, at page 32, lines 12-21 of the specification, Figs. 33-36 and the descriptions thereof, and throughout the specification and drawings.

The Examiner indicated that claims 6-10 and 12 would be allowable if rewritten into independent form to include all of the limitations of the base claim and any intervening claims. Accordingly, claim 15 has been presented to combine the recitations of claims 1 (prior to the above amendment of claim 1), 5 and 6. Claims 116-120 correspond to claims 7-10 and 12, respectively, and depend from claim 115.

The Examiner is respectfully requested to indicate the allowance of claims 113-120 in the next Official Action.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-011CON2.

Respectfully submitted,
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